HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION NO.20984 of 2005

Dated: 20-11-2007

Between:
M.Penchalaiah

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AND

The District Collector (Panchayat),
Kadapa District.

And others.

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Counsel for the petitioner : Sri V.Mallik

Counsel for the respondents : A.G.P. for Panchayat Raj

HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION No.20984 of 2005

O R D E R:

This writ petition is filed for a writ of mandamus to declare the action of respondents 3 and 4 in constructing Anganwadi building in survey No.1500/B of Vontimetta village and Mandal as illegal, arbitrary and in violation of Section 121 of Andhra Pradesh Panchayat Raj Act 1994 (for short "the Act").

Shorn of unnecessary details, the case of the petitioner, as reflected in the affidavit filed in support of the writ petition, is that Survey No.1500/B of Vontimetta village is classified as village site poramboke; that as per Section 55 of the Act it vests in the Vontimetta Gram Panchayat; that an extent of Ac.0.05 to 0.06 cents of land was sought to be allotted for construction of Anganwadi building by the respondents; that the residents of Vontimetta village convened Gram Sabha on 2.10.2003 in accordance with the provisions of Section 6 of the Act and resolved to allot the said land for construction of Saibaba Temple and to earmark an equal extent of different site in the alternative for construction of Anganwadi building; and that Vontimetta Gram Panchayat also passed resolution dated 7.8.2003 to the same effect. It is the further case of the petitioner that despite the resolutions of Grama Sabha and the Gram Panchayat, the respondents have been proceeding with the construction of Anganwadi building and that a representation dated 20.9.2005 was filed before the District Collector, who forwarded the same to respondent No.2 and that he issued telegraphic instructions dated 21.9.2005 to stop the construction. The grievance of the petitioner is that despite direction to stop construction work, respondents 3 and 4 are proceeding with the construction of the building in utter violation of the provisions of Section 121 of the Act.

The District Panchayat Officer, Kadapa – respondent No.2 filed a counter affidavit in which it is stated that the District Collector vide proceedings dated 6.12.2002 sanctioned 33 Anganwadi centers in Kadapa district and Vontimetta Gram Panchayat is one among them and that execution of work was entrusted to the engineering department of District

Scheduled Casts Service Cooperative Society Limited by ICDS, Kadapa and the construction was also commenced. As the villagers obstructed the construction, the ICDS authorities stopped further construction of the building and that the ICDS authorities have not taken approval of the Gram Panchayat as required under Section 121 of the Act for construction of the building. The District Panchayat Officer while being critical of the failure of ICDS in obtaining building permission, however, stated in his counter affidavit that while Gram Panchayat is not empowered to give away the lands for carrying on religious activities by constructing temples, mosques etc., Anganwadi building will be useful to all the villagers and that the Gram Panchayat with the approval of the District Collector can alienate the land with the approval of the Government for constructing Anganwadi building.

Respondent No.3, the Project Director, DW & CDA, Kadapa filed a counter affidavit in which she disputed that the village site poramboke on which the Anganwadi building is under construction vested in the Gram Panchayat. According to her, the site vested with the revenue department and that since the Anganwadi building is meant for public purpose, the District Collector accorded permission for construction of the building. She further stated that under Section 58(1) of the Act Government poramboke, namely, grazing ground, threshing floors, burning and burial grounds, cattle stands, cart stands and topes which are at the disposal of the Government and are not required by them for any specific purpose shall vest with the Gram Panchayat and even those poramboke lands can be withdrawn from the purview of the Gram Panchayat by the Government under Section 58(2) of the Act.

An additional counter affidavit has also been filed by the Project Director in which while reiterating the contentions raised by her in the counter affidavit it is also stated that the District Collector vide his proceedings dated 6.12.2002 permitted construction of Anganwadi building in the poramboke lands. Petitioner filed a reply affidavit was controverting certain averments contained in the counter affidavit.

The main contention of the petitioner is that despite the resolutions passed by the Gram Panchayat and the Gram Sabha earmarking the land on which construction of Anganwadi building is commenced, for construction of Saibaba Temple, respondents 3 and 4 commenced the construction of Anganwadi building. He further stated that under Section 121 of the Act it is

obligatory for respondents 3 and 4 to obtain permission of the Gram Panchayat for constructing a building and that in view of their failure to apply for and obtain construction permission, their action is liable to be declared as illegal and unauthorized.

I have given my anxious consideration to the submission of the learned counsel for the petitioner. Though the respondents have not questioned the locus standi of the petitioner, on a careful consideration of the pleadings of the petitioner, I am of the view that he miserably failed to satisfy this Court on his locus to maintain this writ petition. In the affidavit filed in support of the writ petition, he has not indicated his occupation and his interest in the subject matter of the dispute. After the commencement of the hearing of the case and when this Court repeatedly pointed out the petitioner's failure to indicate the nature of his interest in filing this writ petition, he filed a reply affidavit sworn to on 20.8.2007 in which also he failed to indicate his occupation. He had merely claimed in para-5 of his reply affidavit that he has donated an amount of Rs.10 lakhs to Lord Narasimhaswamy Temple of Penchalakona, Nellore district for the construction of Kalyana Mandapam. He has not given the date on which the said donation was made nor he filed any material in support of the said averment.

In **Jasbhai Motibhai Desai Vs. Roshan Kumar**[1] the Supreme Court held that in the context of locus standi to apply for a writ of certiorari, an applicant may ordinarily fall in any of the three categories, namely; 1) person aggrieved, 2) stranger, and 3) busy body or meddlesome interloper. It was further held that the Court should not interfere at the instance of a stranger unless there are exceptional circumstances involving grave miscarriage of justice having an adverse impact on public interest. On a careful consideration of the pleadings and the material, I have no doubt in my mind that the petitioner falls within the category of 'stranger' as specified by the Supreme Court in the said judgment. He neither claimed that either his personal interests or any of his legal rights are affected or that he has filed this writ petition in public interest. The learned counsel for the petitioner however relied upon the judgment of the Supreme Court in **Mehsana District Central Co-operative Bank Limited Vs. State of Gujarat**[2] in which it was held that when an action taken in violation of statutory provisions by a public authority was brought to the notice of the High Court even by a business rival, the High

Court should entertain the writ petition filed in public interest and strike down such an action. In my opinion, this judgment has no application to the facts of the present case, because as already pointed out, the petitioner failed to indicate the nature of his interest. Unlike in the said case decided by the Supreme Court the petitioner is neither a business rival nor has maintained the writ petition in public interest.

Since the petitioner grossly failed to satisfy this Court on the maintainability of the writ petition, I am not inclined to consider the various pleas raised by him on merits such as the efficacy of the alleged resolution passed by the Gram Panchayat or Gram Sabha and whether the construction undertaken by respondents 3 and 4 is in violation of Section 121 of the Act. Interestingly, the Gram Panchayat whose resolution is sought to be violated is the only aggrieved party and it has neither taken any action against respondents 3 and 4 for construction of the building nor approached this Court complaining violation of its resolution. Therefore, I am not inclined to entertain and adjudicate the dispute raised by the petitioner on merits.

There is another reason for my disinclination to interdict respondents 3 and 4 from raising construction, namely, that undoubtedly construction of Anganwadi building is in the interest of the villagers. Even assuming that in the construction of Anganwadi building respondents 3 and 4 committed violation of law, this Court in exercise of jurisdiction under Article 226 of the Constitution of India which is discretionary in nature need not interfere to prevent construction of a building which is meant for public purpose. As held by the Supreme Court in **Chandra Singh Vs. State of Rajasthan**[3] that the High Court or the Supreme Court while exercising their extraordinary jurisdiction under Article 226 or Article 32 of the Constitution of India may not strike down an illegal order, merely because it is lawful to do so. In the said judgment the Supreme Court relied upon its earlier judgment in **Champalal Binani Vs. C.I.T.West Bengal**[4] in so holding. In **Shiv Shankar Dal Mills Vs. State of Haryana**[5] it was held that Article 226 grants an extraordinary remedy which is essentially discretionary although founded on legal injury and it is perfectly open for the Court exercising its flexible power to pass such order as public interest dictates and equity projects. A Division Bench of this Court in **Satyavarapu Appalaraju and Others Vs. Government of A.P., and Others**[6] to which I am a party, declined to interfere with the action of the

Saluru Municipality in transferring a piece of land in exchange to a private party without obtaining the permission of the Government under Rule 4(1) of the Andhra Pradesh Municipalities (Acquisition of Transfer of Immoveable Properties) Rules 1967 on the ground that the purpose for which the transfer was made was in public interest.

In the instant case the petitioner failed to plead, left alone prove, that construction of the Anganwadi building is resulting in violation of anybody's fundamental or legal rights or the same is against the public interest.

For the aforementioned reasons, the writ petition is dismissed.

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C.V.NAGARJUNA REDDY,J

Date:20 .11.2007
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[1] (1976)1 SCC 671
[2] AIR 2004 SC 1576
[3] (2003) 6 SCC 545
[4] AIR 1970 SC 645
[5] AIR 1980 SC 1037
[6] 2006 (6) ALD 714 (DB)